IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 7437 of 2006(I)

PETITIONER:

DR.O.RAGHUTHAMAN,
CIVIL SURGEON, PRIMARY HEALTH CENTRE,
PERIYA, KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:

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1. THE STATE OF KERALA,
REP. BY THE SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT MEDICAL OFFICER,
KASARAGOD, OFFICE OF THE DISTRICT MEDICAL
OFFICER, KANHANGAD.P.O.

3. THE SECRETARY,
VIGILANCE (C) DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SRI BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 7437 of 2006(I)

APPENDIX

PETITIONER'S EXTS:-

EXT.P1 THE TRUE COPY OF THE ORDER OF SUSPENSION G.O.(RT) NO.32/2001/VIG DATED 23/1/2001

EXT.P2 THE TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 17/08/2002

EXT.P3 THE TRUE COPY OF THE REPORT OF TRANSFER OF CHARGE

EXT.P4 THE TRUE COPY OF THE REPRESENTATION DATED 27/03/2004

EXT.P5 THE TRUE COPY OF THE COMMUNICATION DATED 28/10/2004 ISSUED BY THE ACCOUNTANT GENERAL (A&E), THIRUVANANTHAPURAM

EXT.P6 THE TRUE COPY OF THE REPRESENTATION DATED 31/12/2004 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P7 THE TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) NO.18590/2005 DATED 21/06/2005

EXT.P8 THE TRUE COPY OF THE SHOW CAUSE NOTICE DATED 06/09/2005 ISSUED BY 23RD RESPONDENT

EXT.P9 THE TRUE COPY OF THE EXPLANATION DATED 21/09/2005 SUBMITTED BY THE PETITIONER TO EXT P8.

EXT.P10 THE TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT G.O. (RT) NO.297/05/VIG DATED 22/11/2005.

RESPONDENT'S EXTS:-

EXT.R3(a) CIRCULAR NO.65/94/FIN DATED 26/11/1994

EXT.R3(b) G.O.MS NO.169/94/GAD DATED 23/04/1994

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J

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W.P.(C).No.7437 of 2006 (I)

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Dated this the 2nd day of April, 2006

J U D G M E N T

The petitioner was placed under suspension from 23/01/2001 to 17/07/2002. That was referable to VC.9/2000 registered by Vigilance and Anti-Corruption Bureau. Ultimately, that vigilance case was dropped, being one on mistake of facts.

2. The allegation against the petitioner related to alleged misconduct on misappropriation of Rs.26,294/-, while he was the Nodal Officer of HIV/AIDS awareness programme from January 1996 to March 1996, and misappropriation of an amount of Rs.63,436/-, while working as District Leprosy Officer from 05/11/1995 to 10/08/1998.

3. Dropping criminal proceedings against him, the Director of Vigilance and Anti-Corruption Bureau, recommended recovery of Rs,3,644/- from the petitioner, being the fuel charges drawn by him for his private vehicle.

4. Exhibit P8 was issued to the petitioner calling upon him to show cause against the tentative decision of the Government, regarding the manner in which the Government proposes to treat his period of suspension. He submitted Exhibit P9 reply.

5. The Government, thereafter, issued the impugned Exhibit P10, ordering the treatment of the period from 23/01/2001 to 17/01/2002, that is, for a period of around 1½ years, as duty for all purposes limiting the pay and allowances to subsistence allowances already drawn, and the period from 18/07/2002 to 03/09/2002, as per Note No.2 below Rule 56B(9), Part I KSRs.

6. An order by which the Government decides, as to how a period of government servant under suspension is to be treated, is at any rate not an order imposing a penalty. The financial implications of the treatment of the period from 23/01/2001 to 17/07/2002, in the manner which it has been done, visits the petitioner with a great financial handicap, having regard to the scale on which the petitioner stood employed. A reasonable and

rationale approach in such matters is abundantly necessary. The Government, in their wisdom, did not come into any conclusion that the amounts allegedly misappropriated by the petitioner have to be replenished by him to the Government. The ultimate exercise was only to take from him an amount of Rs.3,644/-, being the fuel charges drawn by him, for his private vehicle. Under such circumstances, I am of the considered view that the Government were not justified in issuing Exhibit P10, virtually depriving the petitioner from drawing any portion of the pay for nearly 1½ years.

7. That apart, the quality of consideration reflected by Exhibit P10 does not show that the reasons stated by the petitioner in Exhibit P9 reply to the show cause notice ever engaged the attention of the Government.

8. The petitioner has also strong objections to the manner in which the last lap of the period of suspension has been treated. According to him, the calculation of number of days as leave is

contrary to the Rules. Even Exhibit P2 shows that the order to rejoin was communicated to him only two days prior to his actual rejoining duty.

For the aforesaid reasons, this writ petition is allowed, quashing the impugned Exhibit P10. The petitioner had already retired from service. This means that his case for reconsideration of Exhibit P9 objections to Exhibit P8 show cause notice, requires to be expedited. Hence, it is directed that action following this judgment shall be taken by giving the petitioner an opportunity of being heard, and proceedings finalised, as regards Exhibit P8 show cause notice, within an outer limit of three months from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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